

# Actuate® Software License and Services Agreement

**NOTE: By ordering, accepting, installing, copying, uploading, downloading or using software product(s) ("Software") or services developed and provided by Actuate Corporation, its subsidiaries or affiliates ("Actuate"), you**

- represent that, if you are not installing, uploading, downloading or using the Software in an individual capacity, you are duly authorized to represent the legal entity that orders the Software or for whose benefit you are installing, uploading, downloading or using the Software or services (as an individual or in such representative capacity, the "Corporate End-User");
- represent that the Corporate End-User is the legal entity identified in the applicable quotations, purchase orders, invoices and other documentation related to the acquisition of the Software or services;
- agree that you will personally refrain from violating the terms of this Software License and Services Agreement ("SLA"); and
- represent that you are properly authorized to conclude a legally binding agreement based on the terms of this SLA between Actuate and the Corporate End-User.

If you do not agree with any of the terms of this SLA, Actuate does not grant any licenses to the Software; use of the Software in the absence of a license authorized by Actuate constitutes an infringement of Actuate's intellectual property rights. In such event, you may not install, copy, upload, download or otherwise make any use of the Software and you must return to Actuate the complete Software package, including the disks and printed materials or, if you downloaded the Software, notify Actuate in writing that you have de-installed the Software, within thirty (30) days of receipt for a refund from Actuate or the company from whom you have received the Software. If you do not comply with these return and notification requirements within thirty (30) days of receipt of the Software, the Corporate End-User will not be entitled to a refund, and it will also not be entitled to use the Software without prior acceptance of this SLA.

In the remainder of this SLA, the Corporate End-User is referred to as "You."

## 1. END-USER LICENSE.

- 1.1 **Software License Grant.** Unless Actuate, or a distributor with Actuate's authority, has expressly notified You in writing (*e.g.*, in an order acknowledgement, through an Actuate web site order, invoice, or license key documentation) that one or more of the parameters defined in Sections 2 through 19 of Schedule 1 to this SLA apply to Software acquired by You, upon Your acceptance of all terms and conditions of this SLA, payment of the proper license fees, and subject to the terms and conditions of this SLA, Actuate hereby grants You a limited, non-exclusive, non-sublicenseable and non-transferable license to install one (1) copy of the Software on one (1) computer and to upload, Access, execute and use that copy so installed as an Evaluation License only. Your license grant is subject to Your compliance with all limitations specified in this SLA.
- 1.2 **Software License Parameters in Schedule 1.** The scope of Actuate's license grant to You is further defined and limited by the license parameters described in Schedule 1. The type of license (*e.g.*, Named User or Platform, etc.) for a given project or application must be consistent across Licensee's Test and Production environments for such project or application. (*e.g.*, If Licensee uses Platform-based Software licenses for its payroll application in production use, then any Test Software for such payroll application must be licensed on a Platform-basis also.) The license parameters described in Schedule 1 may be applied in combination by Actuate (*e.g.*, Named User and Test Software).  
  
If You have any doubts about the applicability of license parameters, You must contact Actuate immediately. You agree that the burden of proof is on You: If You use the Software beyond the scope of the applicable license grant, You are committing a material breach of this SLA and a violation of Actuate's intellectual property rights.
- 1.3 **Licenses to Updates and Information.** If Actuate provides any updates of Software, such items are subject to all license limitations applicable to the Software to which the updates and modified versions relate. If Actuate provides information or other items without a direct relation to a particular item of Software, *e.g.*, in a training context, You may internally use, and copy such items as reasonably necessary for the intended use.
- 1.4 **CPU Notice and Upgrade Requirements.** Except with respect to Actuate's Views and Track Software, prior to the initial installation of any Software, You shall notify Actuate in writing in accordance with the procedure set forth at <http://www.actuate.com/license> of the location, brand, model name and number of the Server, and the number, type and speed of each of the CPUs of each Server on which any component of the Software is to be installed and any other information reasonably requested by Actuate ("Identifying Information").

Once installed, You must obtain Actuate's written consent before You move any Software from any Server or CPU to another Server or CPU, which movement or transfer may be subject to a Server or CPU upgrade transfer license fee at Actuate's discretion. Your application for such consent shall be submitted in accordance with the procedure set forth at <http://www.actuate.com/license> and include the Identifying Information of the Server or CPU from and to which the Software is being moved. Actuate may withhold Software license key(s) if Actuate cannot verify that You are using the Software in an authorized manner. If Actuate grants its consent, You may reinstall the Software on the new Server or CPU on the condition that You delete the Software from the previous Server or CPU within five (5) days of successful reinstallation.

Software may be "Node Locked." Node Locked Software uses a unique license key to activate Software on a specific instance of hardware, *i.e.*, the node identification information for the hardware is embedded in a particular license key by Actuate. That license key is then verified against the hardware's node identification information before the Software's functionality can be enabled. To enable Node Locked Software, You must provide Actuate with the node identification information of Your hardware by running a utility that accompanies the Node Locked Software and following the instructions. Actuate will then send You a node lock key for that hardware and Software combination. You agree to use each license key issued only for one copy of the Software and on one identified, properly licensed unit or cluster of hardware. When a new license key is issued to replace an existing license key (the "Old Key") You will immediately and permanently destroy and stop all use of the Old Key.

- 1.5 **Territorial Limitation.** You may not install, upload, download, Access, or otherwise use the Software outside of the country to which the Software was initially shipped.
- 1.6 **Copies.** After You have installed a copy of the Software in accordance with this SLA, You may keep the original copy (as downloaded or delivered on a physical medium) for Archival Use purposes. If any mandatory, non-waivable laws of any jurisdictions permit You to create one or more back-up emergency restart copies, You may exercise such rights, but except for such mandatory, non-waivable rights, You agree not to create any additional copies of the Software or accompanying documentation. You acknowledge and agree that, among other methods of copying, Software is copied when it is loaded into temporary memory (*i.e.*, RAM) or installed into the permanent memory (*e.g.*, hard disk, CD-ROM, or other physical storage device) that can be accessed by the relevant computer.
- 1.7 **Other Limitations.** You shall not rent, lease, loan, sell or otherwise distribute the Software or any derivative works of the Software. You may not grant Access to the Software to any third parties, except that You may enable customers to create content based on Your internal databases in Software that You host on Your premises under Your control. (*e.g.*, If You are a financial services provider and You have obtained the necessary licenses, You may enable Your customers to run reports on the status of their accounts with You through a web browser interface, but You may not transfer possession of copies of any portion of the Software to Your customers or allow them to run reports on Your customers' own databases.) You may not engage in hosted application or service bureau activities whereby You execute the Software to create content using databases that Your direct or indirect customers own or otherwise supply or make available to You. You shall not modify, adapt, translate, reverse engineer, decompile or otherwise attempt to derive or manipulate the source code of the Software, except as permitted under mandatory, non-waivable laws and only after You have provided thirty (30) days prior written notice to Actuate in accordance with the procedure set forth at <http://www.actuate.com/license> that You intend to exceed the express license scope of this SLA, in order to give Actuate an opportunity, at Actuate's sole discretion, to provide information to You that alleviates the need for reverse engineering or other activities.
- 1.8 **Term.** The license granted in this SLA remains effective until terminated as provided herein, unless You have been notified that a shorter term or a Subscription License applies, in which case, the license continues until the end of the subscription term for which You have paid the applicable subscription license fees.

## 2. OWNERSHIP; CONFIDENTIALITY.

- 2.1 **All Rights Reserved.** Except as expressly provided otherwise in Section 1 (End-User License), Actuate retains title, ownership and all rights and interests in and to the Software. Actuate does not sell the Software or any copies thereof, but only grants the limited licenses on the terms provided herein.
- 2.2 **Proprietary Information.** You agree that other than open-source code, the Software and all computer code (in object and source form), inventions, algorithms, know-how and information embodied in or by the Software and all other business, technical and financial information You obtain from Actuate, whether designated confidential or not ("Proprietary Information") constitutes confidential property of Actuate. You also agree that any expression of Actuate's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, software, and other technical or business information provided to You by Actuate in the course of performing consulting, training, maintenance or other services related to the Software or Actuate's business are the Proprietary Information of Actuate.

- 2.3 **Non-Disclosure.** You agree to keep the Proprietary Information in a secure place, under Access and use restrictions designed to prevent disclosure of the Proprietary Information to unauthorized persons and to instruct and effectively obligate Your personnel to keep the Proprietary Information confidential and use it only as expressly permitted by this SLA. The obligations specified in this Section 2.3 shall not apply to any Proprietary Information that (a) is now available or becomes available to the public without breach of this SLA; (b) is lawfully obtained from a third party or parties without a duty of confidentiality; (c) is known to You or independently developed by You without the use of any of Proprietary Information or any breach of this SLA, as documented and proven by You; or (d) is required to be disclosed by a valid court order provided that You have first given Actuate reasonable written notice of such requirement and You fully cooperate with Actuate in seeking limitations to, and confidential treatment for, any such disclosure.
- 2.4 **Breach.** You agree that any use or disclosure of Proprietary Information other than in accordance with the terms of this SLA constitutes a material breach of this SLA, will terminate all licenses granted by this SLA, and entitle Actuate to seek injunctive relief in addition to any other remedies available under this SLA, at law or in equity, because any disclosure in breach of this SLA will cause irreparable injury to Actuate that cannot be compensated solely by monetary damages.

### 3. SUPPORT.

The Support Policy applies to support services provided by Actuate for most of its products and may be modified by Actuate from time to time. Neither Actuate nor any of its authorized distributors have any obligation to provide support services, unless agreed otherwise in writing for a specified term, which shall not survive any termination of this SLA. Notwithstanding the foregoing, Actuate may, but is under no obligation to, support Evaluation Licenses or No Cost Software. The same level of Support must be purchased for all Software installed on each unit or cluster of hardware. Support may not be discontinued on a portion of the Software installed on a unit or cluster of hardware. All Software used for any application must be on the highest common level of Support. Support policies for particular products are indicated at <http://www.actuate.com/supportpolicy>.

### 4. LIMITATION AND DISCLAIMERS OF WARRANTIES AND LIABILITIES.

- 4.1 **Limited Software Media Warranty.** Actuate warrants that the medium on which Actuate delivers the Software will be free from defects in workmanship and materials under normal use for a period of ninety (90) days after delivery of the Software, and that the medium on which Actuate delivers the Software will be repaired or replaced, at Actuate's option, upon return of said defective medium to Actuate within said ninety (90) day period. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY IN CASES OF DEFECTS OF ANY MEDIA ON WHICH SOFTWARE IS DELIVERED.
- 4.2 **Limited Software Warranty.** Actuate warrants that for a period of ninety (90) days from the initial delivery of the Software (or during the initial subscription Term, for Subscription Software), the Software, if properly used by You in accordance with the Documentation, shall operate in material conformity with Actuate's user manual documentation for such Software. Actuate does not warrant that the Software will meet all of Your requirements or that the use of the Software will be uninterrupted or error free. ACTUATE'S ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY, UNDER THIS LIMITED SOFTWARE WARRANTY SHALL BE for Actuate (i) to attempt, through commercially reasonable efforts, to correct any reproducible material nonconformity discovered within the 90-day warranty period, or (ii) to replace the nonconforming Software. In the event Actuate is unable to cure the breach of warranty described in this Section 4.2 after attempting the remedies described in (i) and (ii) above, You may return the Software and Actuate shall refund any fees paid by You directly to Actuate for the Software provided that subscription fees will only be returned on a pro-rated basis for the portion of the initial subscription period during which the Software was unusable and after it was returned. The above remedies are available only if Actuate is promptly notified in writing, within the warranty period, upon discovery of the nonconformity by You and if Actuate's examination of the Software confirms that such nonconformity exists and that the Software has not been (i) altered or modified, (ii) subjected to negligence, or computer or electrical malfunction, or (iii) used, adjusted, or installed other than in accordance with the instructions set forth in the documentation for the Software. If You have acquired the Software from a third party, e.g., a distributor or OEM, Actuate will provide the above remedies, except that Actuate cannot refund to You any payments; in this respect, You have to turn to the companies from whom You have acquired the Software, which may or may not be obligated to provide a refund, depending on Your contract with such company.
- 4.3 **Limited Services Warranty.** Except as set forth at <http://www.actuate.com/license>, where You have entered into a support agreement with Actuate, Actuate warrants that it will perform support services in a professional and workmanlike manner. If Actuate substantially fails to meet the standard specified in the preceding sentence, You provide Actuate a detailed written request to cure, and Actuate fails to cure any substantial failure within thirty (30) days of receiving Your detailed written request to cure, You may terminate the support component of this SLA within thirty (30) days of the date on which Actuate received Your request to cure. Upon such termination, Actuate shall refund to You on a pro-rated basis any prepaid services fees for the time after Actuate's receipt of Your

detailed written request to cure. THE TERMINATION AND REFUND RIGHT SPECIFIED IN THIS SECTION 4.3 SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUPPORT SERVICES OR ANY UPDATES, INFORMATION OR OTHER ITEMS PROVIDED IN CONNECTION WITH SUPPORT SERVICES.

- 4.4 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 4.1 THROUGH 4.3, ACTUATE MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE OR ANY SERVICES AND YOU SHALL NOT HAVE ANY REMEDIES RELATING TO ANY FAILURE OF THE SOFTWARE OR SERVICES TO CONFORM TO SPECIFICATIONS OR THE WARRANTY STANDARDS SPECIFIED IN THIS SECTION 4. ACTUATE DISCLAIMS ANY IMPLIED WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY STATED IN THIS SLA, ACTUATE MAKES NO WARRANTIES WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY WHETHER ORAL OR WRITTEN, WITH RESPECT TO EVALUATION LICENSES AND NO COST SOFTWARE, WHICH SOFTWARE IS PROVIDED ON AN "AS IS" BASIS ONLY.
- 4.5 **Limitation of Liability.** ACTUATE SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSS OF DATA, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF ACTUATE HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. IN NO EVENT SHALL ACTUATE'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SLA, THE SOFTWARE, OR ANY SERVICES EXCEED THE AMOUNT PAID OR PAYABLE BY YOU. THESE LIMITATIONS SHALL APPLY REGARDLESS OF THE THEORY ON WHICH DAMAGES ARE SOUGHT, INCLUDING, WITHOUT LIMITATION, CONTRACT, STATUTE OR TORT. THEY SHALL NOT APPLY, HOWEVER, IF AND TO THE EXTENT DAMAGES CANNOT NOT BE LIMITED UNDER APPLICABLE MANDATORY LAW.
- 4.6 **Third-Party Software Components.** The Software may contain components made by third parties, which are identified as such in the particular files ("Third-Party Components"). Third-Party Components may be open-source products. You agree, for the benefit of Actuate and the third-party developers of or contributors to the Third-Party Components, that with respect to Third-Party Components (a) Your use is entirely at Your own risk and You waive any rights or remedies, (b) THIRD-PARTY COMPONENTS ARE PROVIDED AS IS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement, and (c) neither Actuate nor any other person or entity shall have any liability for damages, including direct, indirect, special, incidental and consequential damages, or lost profits. Additional information and applicable license terms related to Third-Party Components, and information how any available source code can be obtained, is contained in the actual files for such Third-Party Components.
- 4.7 **Special Terms for Certain Third-Party Software Components.** In addition to the terms stated in Section 4.6, Flash components provided with the Software including but not limited to FusionCharts, PowerCharts, FusionMaps and FusionWidgets from InfoSoft Global Private Limited, may not be used in a standalone fashion and may only be used in conjunction with the contemporaneous use of the Software.

## 5. INTELLECTUAL PROPERTY RIGHTS INDEMNITY.

- 5.1 **Indemnification.** Actuate shall, at its own expense, defend or, at its option, settle, any claim or action brought against You by a third party, and to indemnify You and Your officers, directors, and employees against all damages and costs, including reasonable legal fees finally awarded against You attributable to such claim or action, resulting from such claim or action, or the settlement by Actuate thereof, if and to the extent such claim or action is based on actual infringement of such third-party claimant's patent, copyright, trade secret or trademark by Your use, in accordance with this SLA, of Software or services provided by Actuate. Actuate shall be released from the foregoing obligation unless You provide Actuate with (i) prompt written notice of any such claim or action, or possibility thereof, (ii) sole control and authority over the defense or settlement of such claim or action, and (iii) proper and full information and assistance to settle and/or defend any such claim or action.
- 5.2 **Right to Substitute.** Without limiting Section 5.1 hereof, if a final injunction is, or Actuate believes in its sole discretion is likely to be, entered prohibiting the use of Software or services by You as contemplated herein, Actuate may, at its sole option and expense, either: (i) procure for You the right to use the infringing Software or services as provided herein, (ii) replace the infringing items with non-infringing, functionally equivalent products, (iii) suitably modify the infringing items so that they are no longer infringing, or if (i), (ii) or (iii) above is not obtainable on commercially reasonable terms, (iv) accept return of the infringing items and refund (a) for perpetual licenses, the then present value of the license fees paid for such Software, as amortized over a forty-eight (48) month life or (b) for Subscription licenses or services, prepaid fees on a prorated basis for the unused portion of the subscription or support term. Except as specified above, Actuate will not be liable for any costs or expenses incurred without its prior written authorization.

- 5.3 **Exceptions.** Notwithstanding Sections 5.1 and 5.2 above, Actuate assumes no liability for infringement claims arising from (i) the combination of the Software or work product of any services with other products not provided by Actuate, (ii) any modifications to the Software or services work product unless such modification was made by Actuate, (iii) use of the Software not in accordance with Actuate's user manual documentation, or (iv) Third-Party Components.
- 5.4 **Limitation.** THIS SECTION 5 STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF ACTUATE, AND YOUR EXCLUSIVE REMEDIES, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD-PARTY RIGHTS BY THE SOFTWARE OR ANY SERVICES PROVIDED BY ACTUATE.

## 6. TERMINATION.

- 6.1 **Termination for Cause.** Either party may terminate this SLA if the other party commits a material breach of this SLA and fails to cure such breach within thirty (30) days of receipt of a detailed written request to cure. Neither party may terminate this SLA except as expressly provided herein, but either party may, prior to the end of any subscription or support term, decline a renewal by way of written notice.
- 6.2 **Obligations Upon Termination.** Upon termination or expiration of this SLA, You will immediately destroy or return to Actuate all Software and Proprietary Information in Your possession and, upon Actuate's request, certify compliance with this obligation in a writing duly signed by an authorized representative. Actuate is not obligated to refund any payments, except as expressly provided otherwise in Sections 4 and 5 of this SLA.
- 6.3 **Effect of Termination.** The following provisions shall survive termination of this SLA: 2, 4.4, 4.5, 4.6, 5 through 8, and Schedule 1.

## 7. GENERAL TERMS AND CONDITIONS.

- 7.1 **Choice of Law; Arbitration.** This SLA and any dispute arising out of or in connection with this SLA, the Software, or any services performed by Actuate ("Dispute") will be governed by California law. The Convention on Contracts for the International Sale of Goods shall not apply. If You are based in the United States, You submit to the personal jurisdiction of the courts in San Mateo County, California, USA, and all Disputes shall be exclusively subject to the jurisdiction of such courts. Otherwise, all Disputes shall be resolved by final and binding arbitration before three (3) arbitrators pursuant to the rules and under the auspices of the International Chamber of Commerce, Paris. The arbitrators shall have the authority to determine issues of arbitrability and to award compensatory damages, but they shall not award punitive or exemplary damages. At either party's request, the arbitrators shall issue a written decision explaining the facts and legal reasoning on which their decision is based. The arbitration proceedings shall be conducted in the English language and take place in San Francisco, California, or any other place on which all three arbitrators unanimously agree. As the sole exception to the foregoing agreements on exclusive jurisdiction and arbitration, either party may, at its sole discretion, seek preliminary or permanent injunctive relief in any court of competent jurisdiction.
- 7.2 **Complete Agreement.** This SLA and any writings issued by Actuate that are expressly incorporated herein (including, without limitation, Actuate's specification of the applicable license parameters and of the legal entity that is entitled to use the Software and services) represent the entire agreement and understanding between the parties and supersede any prior or contemporaneous agreements and understandings regarding the subject matter hereof. Actuate does not accept, and Actuate hereby expressly rejects, any additional terms that You may present at any time on purchase orders or otherwise. If You have entered into a separate click-through agreement that provides You with more limited rights than this SLA or a written agreement regarding any particular item of Software or services with Actuate that both parties signed in handwriting, then that agreement shall supersede this SLA with respect to such Software item or services.
- 7.3 **No Modification or Waivers.** This SLA cannot be modified, except with Actuate's express written agreement, which Actuate may grant via e-mail or electronic means (e.g., clicking through a license distributed with a subsequent version of the Software; in connection with an online support renewal subject to new or modified support terms). No modification can be accomplished by course of conduct. Any failure or delay to exercise or any partial exercise of any right, power, or privilege hereunder by Actuate shall not operate as a waiver.
- 7.4 **No Assignment.** You cannot assign this SLA or any rights or obligation thereunder. Any purported assignment by You, whether by operation of law, change in control, or otherwise, shall be null and void. Actuate can assign or delegate performance under this SLA: (i) to an affiliated company, or (ii) in the event of a merger, acquisition or sale of all or substantially all of the assets of Actuate or an Actuate business unit. Anything in this SLA or any agreement related to this SLA (a "Related Agreement") to the contrary notwithstanding, Actuate shall have the right, without Your prior written consent, at any time, and in its sole discretion, to assign for security interest purposes any or all of its rights under this SLA and any Related Agreement to any lender providing financing to

Actuate and any of such lender's permitted assigns, and, upon the occurrence and during the continuance of any event of default under the financing agreements between any such lender (or its permitted assigns) and Actuate, such lender (or its permitted assigns) may exercise any or all of the rights, interests, and remedies of Actuate under this SLA or any Related Agreement.

- 7.5 **Severability.** If and to the extent that any provision of this SLA is invalid or unenforceable under applicable law, then such provisions shall be interpreted in a manner that comes as close as possible to its original intent, and the remaining provisions shall nevertheless remain in full force and effect.
- 7.6 **Compliance.** You shall comply with all then current laws and regulations of the U.S. Government and the government of the country in which You receive delivery of the Software, including, without limitation, export control laws, and You shall indemnify Actuate from any costs and losses arising from or related to Your non-compliance.
- 7.7 **Audit.** Upon reasonable notice, You shall permit Actuate or a designated third party to audit Your books, records and computer systems to ensure that You are using all Software and services in accordance with this SLA, including but not limited to, not using more Software than You have licensed hereunder, including without limitation, an audit of the number of CPUs, Servers, Named Users, Named Developers and virtual users Accessing or otherwise using the Software. You agree to maintain sufficient records so that Actuate can successfully perform the audit contemplated by this Section. If You are out of compliance, You shall, in addition to any other rights and remedies Actuate may have, promptly pay for the costs of the audit and for the licenses that are required for Your actual use based on the higher of Actuate's non-discounted list prices in effect (a) when You originally acquired the Software, or (b) at the time Your non-compliance is discovered by Actuate.
- 7.8 **Publicity.** You agree that Actuate can publicly identify You as an Actuate customer. You agree that Actuate can use, among other things, Your name and descriptions of Your use or intended use of the Software in Actuate press releases, web sites, and marketing materials, and that Actuate does not need Your prior approval to publish such materials.
- 7.9 **U.S. Government Rights.** The Software, including related documentation, is provided with Restricted Rights. The use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in this SLA, and in the applicable provisions of subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause DFARS 252.227-7013, or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19. The manufacturer is Actuate Corporation, 2207 Bridgepointe Parkway, San Mateo, California 94404.
- 7.10 **Written Form.** Any notices or other communications under or in connection with this SLA shall be ineffective, unless the following form requirements are observed: (a) Actuate may provide notices in any electronic or physical format to You; (b) You may provide notices to Actuate in accordance with the procedure set forth at <http://www.actuate.com/license>.
- 7.11 **Governing Language.** The English version of this SLA is legally binding and shall prevail in case of any inconsistencies with any translated versions that may be provided for convenience.

## 8. SPECIAL TERMS FOR DIRECT CUSTOMERS ONLY.

If You acquire Software or services from parties other than Actuate, then this Section 8 does not apply to You. If You acquire Software or services directly from Actuate, then this Section 8 does apply to You.

- 8.1 **Shipping and Payment Terms.** All shipments of Software will be made (a) electronically or (b) physically FOB point of shipment for shipments to destinations in the United States or FCA point of shipment for shipments to all other destinations. Upon shipment of Software, Actuate will invoice You, if applicable, for such Software. You will remit payment for invoices within thirty (30) days following receipt thereof. All fees will be nonrefundable except as otherwise expressly provided herein. Late charges in the amount of one and one half percent (1.5%) per month, or in the maximum amount permitted by applicable law, whichever is less, apply to any amounts that are overdue. You shall reimburse Actuate for all collection costs, including, but not limited to reasonable attorneys fees.
- 8.2 **Taxes.** You shall be responsible for and pay all customs duties, sales, use, and excise taxes, VAT, and any like charges imposed by any federal, state, or local government for any Software or services provided hereunder, excluding only U.S. taxes based solely on Actuate's net income. When Actuate has the legal obligation to collect such taxes, the appropriate amount shall be due upon invoice to You unless You provide Actuate with a valid tax exemption certificate authorized by the appropriate taxing authority. You shall hold Actuate harmless from all claims and liability arising from Your failure to pay any such taxes, duties or charges.

## Schedule 1 to Actuate SLA

# SOFTWARE LICENSE PARAMETERS

## LICENSING METHOD

### 1. EVALUATION LICENSE.

If you have an "Evaluation License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

Evaluation Licenses are CPU licenses, Named User licenses, or Named Developer licenses, *etc.*, which expire at the end of the evaluation term. Evaluation Licenses are to be used for internal, evaluation purposes only. Evaluation Licenses may not be used for migrating to a new operating system, a new hardware platform, or a new version of Software or software. For Evaluation Licenses, the license granted in this SLA will terminate as of the expiration of the evaluation term provided by Actuate, upon three (3) days written notice from Actuate, or forty-five (45) days after Your acceptance of this SLA, whichever comes first. Evaluation Licenses may not be renewed or extended without written authorization from Actuate. Please see <http://www.actuate.com/licensing>.

### 2. LIMITED USE LICENSE.

If You acquire the Software from a third party and the Software is embedded or bundled with a third-party software application, then You may only use the Software in combination and contemporaneously with the third-party software application with which the Software is embedded or bundled and on the same authorized computer and solely with data generated by such third-party software application. You may not use the Software in a stand-alone fashion, on a different computer, or with software or data not incorporated into or generated by the third-party software application.

### 3. NAMED USER LICENSE.

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Named User License" to a particular item of Software, or if any such writing indicates a maximum number of users, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 3.1 **Named User Defined.** A "Named User" means an individual who has Access to the Software. For purposes of this SLA, "Access" means: (i) being authorized to run or execute or actually running or executing the Software; or (ii) being an intended recipient of content generated by the Software ("Content") whether on-line, via e-mail, or in printed form (*e.g.*, a monthly financial statement).

Named User Software is allocated on a per Named User, per software component, per Instance basis. (An "Instance" means each copy or implementation of the Software installed on a Server or clustered group of Servers). Thus, each individual Named User, whether real or simulated, must have a separate Named User license for each Instance of a Software component they Access. Actuate Additional Volume Option or Online Archive Option requires a separate Named User license for each Encyclopedia Volume (*i.e.*, application) that an individual person Accesses.

- 3.2 **Access by Named Users.** You may not grant Access to the Software to any individual, unless You have allocated a lawfully obtained Named User License to such individual and documented such allocation in accordance with Section 3.1 of this Schedule 1. You may not allocate Named User Licenses to functions or shared positions. If You have allocated a Named User License to a particular employee or independent contractor who then leaves Your organization or moves to a position in which such individual will no longer use the Software, You may reallocate the Named User License to another Named User provided that the previously allocated Named User no longer has Access to the Software and You do not reallocate Named User Licenses more than once every calendar quarter.
- 3.3 **Maximum Number of Named Users.** The number of Named Users shall be one (1), unless Actuate, or a distributor with Actuate's authority, has agreed in writing to a greater number.

#### **4. NAMED DEVELOPER LICENSE.**

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Named Developer License" to a particular item of Software, or if any such writing indicates a maximum number of developers, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

Named Developer Software is allocated on a per individual person, per software component, per Instance basis. Thus, each individual person must have a separate Named User license for each Software component on each Instance they Access, use or from which they receive content. Named Developer licenses may be used for Development purposes only.

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In addition to the information required by Section 1.4, Licensee must: (i) identify the number of individuals using the Named Developer Software, and (ii) identify each computer that each such individual will use for Development.

#### **5. CPU BASED LICENSING.**

For purposes of this SLA, a "CPU" is defined as a single core (if applicable) of each processor, whether physical or virtual, on each computer.

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You shall configure the Software so that such Software Instance can only be executed or run on the number of licensed CPUs. The licensed number of CPUs is one (1) unless Actuate, or a distributor with Actuate's authority, specifies a greater number in writing. Every CPU on the reporting server environment including, but not limited to, remote clustered nodes that has the ability to execute or run Software must be separately licensed.

CPU Software is licensed on a per CPU, per software component, per Instance basis. Thus, each individual CPU must have a separate license for each Instance of each Software component installed. Actuate Multi-Application Option or Online Archive Option also requires a separate license for each Instance of each Encyclopedia Volume (*i. e.*, application) installed.

#### **6. SERVER LICENSE.**

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Server License" to a particular item of Software, then the Software allows You unlimited use of Server Software installed on one (1) CPU on one (1) Server unless Actuate, or a distributor with Actuate's authority, specifies a greater number in writing.

For purposes of this SLA, a "Server" is defined as a computer capable of running software designed for use on a server. Each blade, hardware partition, or virtual partition is considered a separate Server for which a separate Server Software license is required.

#### **7. PLATFORM LICENSE.**

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Platform License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

Platform License Software may only be used: (i) on the number of CPUs and (ii) by the number of Named Users specified. Use of Software licensed under a Platform License is also subject to the terms applicable for Named User Licenses and CPU Licenses.

You shall configure the Software so that such Software can only execute and run the number of CPUs that are licensed. The licensed number of CPUs and Named Users is one (1), unless Actuate, or a distributor with Actuate's authority, specifies a greater number in writing.

#### **8. WEB SERVER BASED LICENSE.**

For purposes of this SLA, a "Web Server" is defined as a computer or computer program responsible for accepting HTTP requests from client applications (*e.g.*, a web browser running on a computer or phone) and serving them HTTP responses along with optional data contents, which usually are web pages such as HTML documents and linked objects (images, *etc.*).

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Web Server License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

You shall configure the Software to allow one (1) Named User to Access a single Web Server. Access of each additional Web Server requires a separate Web Server license unless Actuate or a distributor with Actuate's authority has agreed in writing to a greater number.

## **9. REPOSITORY RESTRICTED BASED LICENSE.**

For purposes of this SLA, a "Repository" is defined as a distinguishable collection of records or information stored in a computer in a systematic (*i.e.*, structured) way so that the Software can query it for its operation.

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You shall configure the Software so that You are only allowed to save data to and report from one Repository.

## **10. READ ONLY BASED LICENSE.**

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## **11. SUBSCRIPTION LICENSE.**

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Subscription License" to a particular item of Software, or if any such writing indicates a limited license term, then the following license terms and conditions apply to You in addition to all other terms of the SLA and one or more of the parameters described in this Schedule 1:

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## **12. CLIENT SOFTWARE LICENSE.**

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If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a license to Actuate's Views product, then your license to Views contains the following license terms and conditions in addition to all other terms of the SLA.

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## **14. MULTI-INSTANCE LICENSE.**

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Multi-Instance License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

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## 15. NO COST SOFTWARE.

Only the following Actuate software products may be licensed as "No Cost Software". Provided that No Cost Software is delivered electronically (*i.e.*, there will be no printed documentation, physical media, *etc.*), Actuate agrees not to charge a license fee for such Software. No Cost Software products are:

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- Actuate e.Spreadsheet API
- Actuate Information Object Designer

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## DEPLOYMENT TYPE

### 1. DEVELOPMENT.

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Development means that You may use the Software for setup, report design, implementation, customization, integration and single user testing. Software licensed for Development may not be used for any other Deployment activity such as Test (as defined in Section 2 below), Production, or Hot/Warm Back-up.

### 2. TEST.

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Test License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

Test Software license permits You to use Test Software to verify that Software installations behave and perform correctly in multiple user environments, regardless of whether the users are real or simulated. Every simulated user in a multi-user environment requires a separate Test Software license. Examples of Test activities include user acceptance testing (UAT), staging, load testing, and performance testing.

### 3. PRODUCTION.

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Production License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

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### 4. COLD BACK-UP.

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Cold Back-Up License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

Cold Back-Up means that You may make restorable snapshots of the Production server as a back-up Server periodically, however the Software is not running. If the Production Server goes down, it will take some period of time and manual intervention to bring the Cold Back-Up Software into Production mode.

### 5. HOT/WARM BACK-UP.

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive a "Hot/Warm Back-Up License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

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## **6. DISASTER RECOVERY.**

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## **7. ARCHIVAL USE.**

If Actuate, or a distributor with Actuate's authority, notifies You in writing that You receive an "Archival License" to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

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